
Sunset Evaluation Update: Medicine and Surgery

A Report to the
Governor
and the
Legislature of
the State of
Hawaii

Submitted by

THE AUDITOR
STATE OF HAWAII

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OVERVIEW

THE AUDITOR
STATE OF HAWAII

Sunset Evaluation Update: Medicine and Surgery

Summary

We evaluated the regulation of physicians, physician assistants, and emergency medical service personnel under Chapter 453, Hawaii Revised Statutes, and conclude that the public interest is best served by reenactment of the statute.

Physicians are independent medical practitioners who diagnose and treat injury and disease. Physician assistants practice medicine under the supervision of a physician; their responsibilities include taking medical histories, performing physical examinations, and treating minor injuries. Emergency medical service personnel—who may be emergency medical technicians (EMTs) or mobile intensive care technicians (MICTs)—work from ambulances to provide prehospital care at the scene of an accident or sudden illness. They serve under the direction and control of a physician.

In Hawaii, a nine-member Board of Medical Examiners regulates these occupations. The board is administratively attached to the Department of Commerce and Consumer Affairs. The department's Professional and Vocational Licensing Division provides administrative services to the board and the Regulated Industries Complaints Office (RICO) handles consumer complaints and pursues legal action when appropriate.

We found that continued regulation of physicians, physician assistants, and emergency medical personnel is needed. If practiced incompetently, these occupations have a significant potential for harm to consumers.

Since our first sunset evaluation in 1984, improvements have been made in the regulatory program. Additional improvements are needed in several areas. The board lacks policies to address national developments in examinations for physicians and relicensure following termination of a license. Its policy on supervision of physician assistants may be impractical. In addition, the program discriminates against mainland-trained emergency medical personnel who wish to practice in Hawaii by requiring them to take an equivalency examination setting an unrealistically high passing score, limiting the number of times they may take the examination, and preventing them from receiving temporary certification. We also found deficiencies in the administration of the equivalency examination.

The board appears to pay insufficient attention to physician assistants and emergency medical personnel, and it needs more information from RICO.

Finally, the board's informed consent guidelines for breast cancer need review.

Recommendations and Response

We recommend that the Legislature reenact Chapter 453, Hawaii Revised Statutes, to continue the regulation of physicians, physician assistants, and emergency medical service personnel. To ensure that adequate attention is given to physician assistants and emergency medical personnel, the Legislature should consider amending Chapter 453 to establish a reconstituted Board of Medical Examiners consisting of seven physicians, one physician assistant, one mobile intensive care technician, and two lay people.

The board should also propose amendments to Chapter 453 covering implementation of the new United States Medical Licensing Examination program and relicensing after a license has been automatically terminated. It should develop amendments to the rule on supervision of physician assistants; require the equivalency examination for all emergency medical service personnel; reevaluate the passing score of the equivalency examinations; provide for temporary certification of mainland-trained emergency medical applicants; and remove the limit on the number of times applicants may take the equivalency examination. The board should work with RICO on the kinds of information the board should receive about medical complaints and review the guidelines on informed consent for breast cancer.

The Department of Commerce and Consumer Affairs should review the adequacy of its administration of examinations.

The Board of Medical Examiners concurs that Chapter 453 should be reenacted and agrees with most of the other recommendations. It is willing to consider requiring that all applicants take the equivalency examination. It does not agree that the board should be reconstituted and it favors repeal rather than review of the breast cancer guidelines.

The department believes that its examination facilities and procedures are satisfactory. It also proposes ways for RICO to provide more information to the board.

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Foreword

The Sunset Law, or the Hawaii Regulatory Licensing Reform Act of 1977, schedules regulatory programs for termination on a periodic cycle. Unless specifically reestablished by the Legislature, the programs are repealed. The State Auditor is responsible for evaluating each program for the Legislature prior to its date of repeal.

This report evaluates the regulation of physicians, physician assistants, and emergency medical service personnel under Chapter 453, Hawaii Revised Statutes. It presents our findings as to whether the program complies with policies in the Sunset Law and whether there is a reasonable need to regulate these occupations to protect the health, safety, and welfare of the public. It includes our recommendation on whether the regulatory program should be continued, modified, or repealed. In accordance with Section 26H-5, HRS, the report incorporates in Appendix B the draft legislation intended to improve the regulatory program.

We acknowledge the cooperation of the Department of Commerce and Consumer Affairs, the Board of Medical Examiners, and others whom we contacted during the course of our evaluation. We appreciate the assistance of the Legislative Reference Bureau, which drafted the recommended legislation.

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Chapter 1

Introduction

The Sunset Law, or the Hawaii Regulatory Licensing Reform Act, Chapter 26H, Hawaii Revised Statutes, establishes policies for occupational licensing and schedules the repeal of licensing statutes according to a timetable. The law directs the State Auditor to evaluate each licensing statute prior to the repeal date and to determine whether the health, safety, and welfare of the public are best served by reenactment, modification, or repeal.

This report evaluates whether the regulation of physicians and surgeons, physician assistants, and emergency medical service personnel under Chapter 453, HRS, complies with policies for occupational licensing in the Sunset Law.

Regulatory Framework

Chapter 453 places the regulatory program under the Board of Medical Examiners, which is administratively attached to the Department of Commerce and Consumer Affairs. The medical board consists of nine members—seven physician members and two lay members. The board is appointed by the governor and serves without compensation. An executive secretary in the department’s Professional and Vocational Licensing Division serves as staff to the board and administers its day-to-day operations.

The department’s Regulated Industries Complaints Office (RICO) mediates and resolves consumer complaints, pursues disciplinary action against licensees, and seeks court injunctions and fines against unlicensed persons. Final disciplinary decisions are made by the medical board following a recommended decision from the department’s Office of Administrative Hearings. The board also approves disciplinary settlement agreements reached without a hearing.

Background on the Occupations

Physicians, physician assistants, and emergency medical service personnel provide health care. Under Chapter 453, the board regulates these three occupations.

Physicians

Physicians (M.D.'s) are independent practitioners who perform medical examinations, diagnose and treat injury and disease, and give health advice. Most physicians specialize, for example, in such fields as internal medicine, obstetrics-gynecology, psychiatry, radiology, and neurosurgery.

Following college and medical school, M.D.'s usually take three years of graduate medical education (residency). National boards certify physicians in specialties if they complete additional residency training and examinations.

Chapter 453 contains licensing, disciplinary, and reporting provisions for the practice of medicine. The grounds for discipline are set forth in detail.

There are about 5,200 physicians licensed in Hawaii.¹

Physician assistants

Physician assistants practice medicine under the supervision of a physician. Their responsibilities include taking medical histories, performing physical examinations, making preliminary diagnoses, treating minor injuries, and assisting with surgery. They may prescribe treatment, but in Hawaii they are not authorized to prescribe medication.

Under Chapter 453, the medical board sets educational, training, and examination requirements for physician assistants that include passing a national certifying test. Physician assistants may be disciplined on the same grounds as physicians.

About 66 physician assistants are certified in Hawaii.²

Emergency medical service personnel

Emergency medical service personnel work from ambulances to provide prehospital care at the scene of an accident or wherever sudden illness occurs. They may restore breathing, control bleeding, immobilize fractures, assist in childbirth, manage emotionally disturbed patients, resuscitate heart attack victims, and provide poison and burn care. Emergency medical personnel serve under the direction and control of a physician.

Hawaii recognizes two categories of emergency medical personnel. Emergency medical technicians (EMTs) provide basic life support. Mobile intensive care technicians (MICTs) provide basic and advanced life support.

When MICTs provide advanced life support, they are directed in one of two ways: by “standing orders” or by emergency care physicians. Standing orders prescribe treatment in life-threatening situations. They are approved either by the Department of Health (DOH) or the chief of the emergency department at a hospital that is part of DOH’s MEDICOM system. (MEDICOM is a two-way radio communications system linking ambulance dispatch centers, ambulances, and medical facilities.)

Emergency care physicians use a radio or telephone located at a MEDICOM base hospital to direct MICTs working at the site of an emergency or in transit to a medical facility.

The administrative rules authorize discipline of emergency medical personnel on the same grounds as those for physicians.

There are about 571 EMTs and MICTs certified in Hawaii.³

Previous Sunset Evaluation

We conducted our first sunset evaluation of Chapter 453 in 1984.⁴ We found that the opportunities for foreign medical graduates to become licensed were limited and recommended modifications to correct this problem. We also recommended clarifying or improving roles, responsibilities, and relationships among the board, its medical advisory committee, the department, and the Medical Claims Conciliation Panel. We proposed that the department check more thoroughly on the disciplinary history of applicants and that RICO set priorities for the investigation of medical complaints.

At the time of our 1984 evaluation, Chapter 453 did not require the licensing of physician assistants. We recommended that licensing be required and that the level of supervision by physicians be specified.

For emergency medical personnel, we recommended authorizing the board to delegate most of its responsibilities to a committee of emergency physicians and emergency medical personnel. We called for defining the scope of their practice and their supervision. We also recommended adopting clear certification standards and developing a local examination to test competency in any additional skills required for Hawaii practice.

Objectives of the Evaluation

This evaluation sought to determine whether the regulation of physicians, physician assistants, and emergency medical services personnel complies with policies in the Sunset Law. Specifically, the objectives were to:

1. Determine whether there is a reasonable need to regulate these occupations to protect the health, safety, and welfare of the public;
2. Determine whether current regulatory requirements are appropriate for protecting the public;
3. Establish whether the regulatory program is being implemented effectively and efficiently; and
4. Make recommendations based on findings in these areas.

Scope and Methodology

To accomplish these objectives, we reviewed the literature on physicians, physician assistants, emergency medical service personnel, and their regulation. We reviewed statutes and rules on these occupations in Hawaii and the changes in these since our last sunset evaluation in 1984.

We also reviewed complaints and other evidence of harm to consumers. We interviewed members of the Board of Medical Examiners, personnel from the Department of Commerce and Consumer Affairs and the Department of Health, and health care practitioners. We obtained information from state and national groups including the American Medical Association, the Hawaii Medical Association, the American Academy of Physician Assistants, the Hawaii Academy of Physician Assistants, and the Prehospital Emergency Care Professional Association. At the Department of Commerce and Consumer Affairs, we reviewed files on board operations, licensing, enforcement, and correspondence. Finally, we attended a licensing examination for emergency medical service personnel to observe procedures.

Our work was performed from January 1992 through September 1992 in accordance with generally accepted government auditing standards.

Chapter 2

Findings and Recommendations

We recommend that physicians, physician assistants, and emergency medical personnel continue to be regulated.

Most of the recommendations made in our 1984 sunset evaluation have been implemented. For example, Chapter 453, Hawaii Revised Statutes, now recognizes the American Medical Association's Fifth Pathway Program for foreign medical graduates. The Department of Commerce and Consumer Affairs has strengthened procedures for checking the disciplinary history of license applicants and for handling complaints. Chapter 453 now requires physician assistants to be certified and authorizes the board to delegate to a committee many of its responsibilities for emergency medical personnel. The rules define the scope of practice and level of supervision of emergency personnel, and the level of supervision of physician assistants.

The progress has been accompanied by new problems. In this chapter we recommend additional improvements in the statutes, the rules, and the administration of the regulatory program.

Summary of Findings

1. The State should continue regulating physicians, physician assistants, and emergency medical service personnel to protect the public's health, safety, and welfare.
2. The Board of Medical Examiners has not developed policies to address (a) national developments in examinations and (b) relicensure following automatic termination.
3. The board's policy on the supervision of physician assistants by physicians is questionable.
4. Certification requirements in the administrative rules for emergency medical personnel trained on the mainland appear to exceed the statute and to be unfair, restrictive, and discriminatory.
5. The board does not pay sufficient attention to the regulation of physician assistants and emergency medical personnel.
6. The board could benefit from more information from the Regulated Industries Complaints Office.
7. The informed consent guidelines for the treatment of breast cancer need periodic evaluation.

State Should Continue to Regulate Physicians, Physician Assistants, and Emergency Medical Service Personnel

Chapter 453 should be reenacted to continue the regulation of physicians, physician assistants, and emergency medical service personnel. The practice of these occupations has a significant potential for harm to the public's health, safety, and welfare.

All states license physicians and regulate emergency medical personnel. As of 1990, 46 states regulated physician assistants.¹

Evidence of harm

All the practitioners licensed by Chapter 453 provide medical care, either independently (physicians and surgeons) or under supervision (physician assistants and emergency medical personnel). Practitioners who diagnose incorrectly or treat patients incompetently can cause serious physical, emotional, and financial harm. Moreover, consumers are not in a position to judge the competence of these practitioners or to evaluate the quality of their services.

There is evidence that physicians and emergency medical personnel have caused harm in the state. Over the past three years, the Regulated Industries Complaints Office (RICO) of the Department of Commerce and Consumer Affairs opened 237 complaint cases against persons regulated under Chapter 453.

The majority, or 231 of the 237 cases, involved physicians. Of the remaining 6 cases, 2 involved emergency medical technicians (EMTs), 2 involved mobile intensive care technicians (MICTs), and 2 involved physician assistants. Close to half of the 237 cases alleged negligence or incompetence.

In about 42 percent of the cases alleging negligence or incompetence and closed by RICO, the state Medical Claims Conciliation Panel (MCCP) had already found the physicians to be negligent. The MCCP had recommended damages of up to \$1 million from a single physician and up to \$2.1 million from a physician and a medical center.

To further protect consumers, the 1992 Legislature amended Chapter 453 to lower the standard for legal action from gross negligence (a particularly high degree of negligence) to hazardous negligence causing injury to another.² Some negligence cases do not rise to the level of gross negligence but are so egregious as to warrant disciplinary action. RICO gave the following examples: a physician allegedly misread an ultrasound picture and delivered a baby prematurely; another physician prescribed twice the necessary drug dosage for hypertension and the patient died.

Board Should Propose Amendments to the Statutes

The current statute on licensing examinations for physicians will soon be obsolete. In addition, the provision on relicensure following automatic termination appears to be overly restrictive and has led to inconsistent board decisions.

Examinations phased out

There will soon be a new national examination program for physicians that will replace the two currently authorized by Section 453-4 of the statutes. Today, applicants for a medical license can satisfy the examination requirements for licensure in Hawaii in one of two ways: by passing a three-part examination conducted by the National Board of Medical Examiners (NBME) or by passing the two-component Federation Licensing Examination (FLEX) conducted by the Federation of State Medical Boards. Nationally, most graduates of accredited U.S. medical schools are licensed by passing the NBME examinations. Only about one-fourth are licensed by passing the FLEX. All graduates of foreign medical schools are licensed by passing the FLEX.

The national board and the federation recently established a single, uniform, three-step examination for medical licensure known as the United States Medical Licensing Examination (USMLE). The USMLE will replace the NBME and FLEX examinations.

Phasing in of Steps 1 and 2 of the USMLE began in June 1992 and Step 3 will be implemented by June 1994. Concurrently, the NBME and FLEX will be phased out. Part I of the NBME sequence will be given for the last time in September 1991, Part II in April 1992, and Part III in May 1994. FLEX will be given for the last time in December 1993, except for two special administrations of component 1 in 1994, for examinees who have passed component 2 but not component 1 prior to 1994.

The USMLE program recognizes that many medical students and physicians will already have successfully completed some parts of either the NBME or FLEX before the USMLE is completely implemented. It recommends that certain combinations of elements of the examinations—NBME, FLEX, and USMLE—be accepted for medical licensure if completed prior to the year 2000.

Foreign medical graduates who must be certified by the Educational Commission for Foreign Medical Graduates to fulfill Hawaii licensure requirements, may take steps 1 and 2 of the USMLE to meet the examination requirement for certification.

To prepare for the USMLE, the board must decide how it intends to phase out the NBME and FLEX sequences and when to implement the

USMLE. The board should propose amendments to Section 453-4 that would accommodate applicants taking the full USMLE sequence and applicants mixing elements of the NBME, FLEX, and USMLE sequences.

At its meeting of August 18, 1992, the board began this process by voting to accept the USMLE as the sole licensing examination and to initiate the necessary amendments to the statutes and rules.

Restrictive provisions on relicensing

Section 453-6, HRS, requires those with terminated licenses to reapply for licensure. Licenses are terminated automatically when licensees fail to renew for more than one two-year renewal term. The board has treated requests for reinstatement or relicensing inconsistently. This may be because the provision is too restrictive. It requires those with terminated licenses to reapply for licensure as would a new applicant.

In the past two years, the board has had four requests for relicensure. It appears to be handling these matters on a case-by-case basis with no clear policy. In one case, the board relicensed the physician based on her argument that the law did not intend those with terminated licenses to pass an examination. In a second case, the board reinstated a license on the grounds that the physician had allowed his license to lapse in 1988 before the current statute was enacted. In a third case, however, the board chose not to reinstate a license because the physician had allowed it to lapse in 1982. In the fourth case, the board gave a physician whose license had lapsed in 1978 a limited and temporary “medical government license.”

The board needs to develop a consistent policy. In formulating a policy, the board may want to consider using the Special Purpose Examination (SPEX). The SPEX was developed by the national board and the federation to re-examine physicians who hold or have held a license in a United States jurisdiction. The examination helps states assess whether physicians who are five years or more beyond medical school graduation are competent to engage in general medical practice. The board should propose statutory amendments on this subject to the 1993 legislative session.

Board’s Policy on Supervision of Physician Assistants May Be Impractical

The board recently interpreted its rule on supervision of physician assistants in a way which physician assistants say is impractical and contrary to their practice.

Section 16-85-49 of the board’s administrative rules describes the degree of supervision that physicians must exercise over physician assistants. The rule prohibits physicians from permitting physician assistants to

practice in any place apart and separate from the supervising physician's primary places for meeting patients.

The interpretation came in response to a request from a physician assistant on Kauai. The physician assistant had been making house calls to patients in rural areas far removed from his supervising physician's office and to visitors at various Kauai hotels. He received telephone calls for medical services directly from prospective patients. He reported that he provided services within his scope of authority and then reported to the supervising physician. Occasionally, he requested certain kinds of prescriptions for the patients from Kauai pharmacies.

The board advised the physician assistant that, until the board and its attorney could review the statutes and rules for possible amendments, the physician assistant could continue his practice under certain conditions. Two of the conditions are of concern to the physician assistants.

The board said that a patient's home qualifies as one of a physician's primary places for meeting patients, but the physician-patient relationship must be established before the physician assistant can administer medical services there. The relationship could be established either physically or by telephone between the physician and patient. The board also said that the physician assistant may not write and issue any prescriptions to pharmacies.

The board sent a letter to this effect to the physician assistant and a copy to members of the Hawaii Academy of Physician Assistants. The academy objects to the board's interpretation of the rule saying that it contradicts the actual practice of physician assistants.

The academy says the requirement that the physician-patient relationship be first established through direct communication between the physician and prospective patient is unrealistic because both in clinical and remote settings, physician assistants are the first to make contact with the patient. Initially, physician assistants obtain pertinent data and information from the patient which they will give to the physician. In addition, they often treat minor problems such as lacerations, abrasions, and burns that do not require a physician. They are frequently the first providers of health care and may be the only health care provider the patient sees.

If the board's interpretation is not limited to the Kauai case, then all of Hawaii's physician assistants and their supervising physicians will have to comply in their individual practices. The interpretation may not be practical. The patient may not be able to contact the physician immediately if the physician is unavailable. Also, one of the primary functions of physician assistants is to discuss with patients their problems before they see a physician.

The Hawaii Academy of Physician Assistants has offered to assist the board in developing regulations on supervision of physician assistants. The academy feels that the board is not moving ahead on this issue and that it is difficult to communicate with the board, largely because physician assistants are not represented on the board.

The board should take immediate action to work with physician assistants in developing appropriate amendments to the rules. This action is necessary to avoid placing physician assistants, supervising physicians, and patients in impractical or undesirable situations.

Board's Rules Discriminate Against Mainland-Trained Emergency Medical Personnel

Examination for competency to practice in Hawaii

According to the rules, mainland-trained applicants must pass an "equivalency examination," not required of Hawaii-trained applicants. The exemption for Hawaii applicants is unwarranted. Moreover, mainland-trained applicants face unclear application forms and additional fees for the equivalency exams. In addition, only Hawaii-trained applicants are eligible by rule to work while waiting to take the national examination.

We had recommended in our 1984 sunset review that an examination be developed to test competency in the additional skills required for practice in Hawaii.⁶ This recommendation was implemented and examinations were developed for EMTs and MICTs. However, the use of the examinations is questionable. They are being required only for mainland-trained applicants.

The apparent justification for this distinction is that Hawaii's standards are higher than those tested by the National Registry of Emergency Medical Technicians (NREMT). The board approved-training program offered by Kapiolani Community College (KCC) is also said to ensure greater competency for Hawaii-trained applicants. Consequently, it is claimed that a state examination is needed to test whether mainland-trained applicants can meet Hawaii's standards. We find no evidence to support these contentions.

The equivalency examinations that were developed have been controversial. A difference of opinion exists on the purposes of the examinations. The tests were developed presumably to measure whether applicants have the knowledge to be an EMT or a MICT in Hawaii. The department contracted with a consultant to develop two examinations that would include items not covered on the NREMT examinations. The intent was to bridge the gap between the NREMT examination and conditions that would be specific to Hawaii. The examinations were not designed to be "equivalency" examinations to compare mainland-trained

applicants with KCC graduates, but to test for minimum competencies specific to Hawaii. The board meant to require the equivalency examinations for *all* EMT and MICT certification applicants, whether Hawaii-trained or mainland-trained.

Graduates of the KCC program, however, believe that the examinations should test for KCC's curriculum. Local practitioners appear to believe that outsiders have to prove their worth through stringent testing before being accepted. But the belief that Hawaii's standards of competency are superior to most other states' certification standards is not supported by any evidence.

The board has not reviewed mainland programs to determine how they compare with Hawaii programs, or whether Hawaii's programs are in fact superior.

Given the lack of review of mainland programs, requiring the equivalency examination for mainland graduates but not Hawaii graduates is not justified. The requirement unfairly assumes that mainland training programs are inferior.

***Equivalency
examination not
authorized by statute***

The *statute* does not differentiate between mainland- and Hawaii-trained applicants. To be certified as emergency medical service personnel, Section 453-32 requires applicants (1) to hold a certificate from the NREMT, (2) to have passed a course of emergency medical training based on the national curriculum of the U.S. Department of Transportation and approved by the board, and (3) to meet other requirements set by the board, including continuing education and passage of an examination pertinent to the practice of emergency medical services in Hawaii.

In its *rules*, however, the board has established additional certification requirements for both EMTs and MICTs who have been trained out-of-state. The rules state that applicants must have completed a board-approved course of training *or its equivalent*.³

The only board-approved training program is given through KCC, which offers training on Oahu, Maui, the Big Island, and Kauai. Applicants who have not graduated from the KCC program must pass the equivalency examination.

The rules on certification of EMTs and MICTs appear to enlarge the scope of the statute. The statute does not provide for an alternative to a board-approved program. Administrative rule-making is limited to the purpose of carrying out statutory provisions. To have the force and

effect of law, rules should not enlarge or change the law as it is embodied in statute. But the rules have added the equivalency examination to the statutory provision as an avenue by which mainland-trained personnel may become certified. These rules are probably invalid and unenforceable.

The board should amend its rules to require all applicants, whether trained in Hawaii or elsewhere, to pass the equivalency examinations. This would ensure that *all* applicants have the knowledge to practice in Hawaii. If Hawaii-trained applicants have the knowledge then they should pass the examination readily.

Unclear application forms

The information and instruction sheets and the application form for mainland-trained applicants are deficient. The forms do not fully explain or itemize for mainland-trained applicants exactly what documents are needed for a complete application. Because of this, almost none of the applications submitted by applicants for the equivalency exam are complete.

The instruction sheet and application form pertinent to the NREMT exam appear to be designed for Hawaii-trained applicants. The instruction sheet does not inform mainland-trained applicants that a transcript and photocopy of the certificate of completion of their individual training programs are required with their application. This information is provided verbally to applicants by the department.

The application form pertinent to the equivalency exam asks if the applicant has passed the NREMT examination, but the instruction sheet does not explain that the applicant must submit verification of receiving an NREMT certificate or having been licensed elsewhere. The verification forms which are attached to the application are often overlooked by applicants because the instruction sheet does not explain that these must be completed.

In addition, only mainland-trained applicants holding an NREMT certificate are asked to have NREMT verify that they hold the certificate. Hawaii-trained applicants who have received NREMT certificates need only attach photocopies of the certificate to the application.

Additional fees for mainland-trained applicants

Mainland-trained applicants must pay \$120 more in fees than Hawaii-trained applicants.

Hawaii-trained EMTs pay an application fee of \$20 and an examination fee of \$30 for the NREMT examination. MICTs pay an application fee

of \$20 and examination fee of \$100 for the NREMT examination. Mainland-trained applicants who lack NREMT certification pay the same fees to take these exams. But in addition, mainland-trained applicants must pay an application fee of \$20 and exam fee of \$100 for the equivalency examination.

No provision for temporary certification

The statute allows those who have graduated from a board-approved program to have temporary certification while they wait to take the NREMT examinations. This means that they can work in the interim.⁴ Because only those who graduated from the KCC program meet the requirement of board-approved training, mainland-trained applicants are ineligible for temporary certification.

This is without sufficient justification since the board does not review mainland programs. Mainland-trained applicants may have had training programs or work experience that make them as competent as Hawaii-trained people for temporary certification and for employment. Not even to consider them for temporary certification is unfair and restricts entry into the field in Hawaii.

Whether mainland graduates can obtain employment in Hawaii if given temporary certification should be left to the marketplace. Employers should have the flexibility to determine whether to hire them to fill personnel needs.

Restrictive passing score

The equivalency examinations have a passing score of 75 percent. This appears to be unrealistic, particularly for the EMT equivalency examination. As of February 1992, 11 applicants had taken the EMT equivalency examination and all 11 failed. Half of the MICT applicants passed the MICT examination.

The passing scores should be reassessed. During pilot testing, six Hawaii-certified EMTs took the EMT examination and all failed. Six Hawaii-certified MICTs took the MICT examination and three failed. If Hawaii-certified EMTs and MICTs are believed to have the level of competency to perform safely, then the score should be set at a level at which they can pass the examinations. The current passing score appears to be unrealistically high.

In November 1990, the board accepted the equivalency examinations and established the 75 percent passing score with certain conditions. The examinations were accepted provided that they were given to *all* applicants. The board also provided that to determine the reliability of

the examinations, the examinations be first tested on 30 Hawaii-certified EMTs and 30 Hawaii-certified MICTs and at least half of them should pass.

The board made several requests for Hawaii-certified EMTs and MICTs to take the examinations. The response was so poor that this wide-scale testing was not completed. In the meantime, a backlog of mainland-trained applicants waited to be tested, because the board had adopted rules in 1987 requiring those who had not taken the board-approved training program to pass a board-approved examination.

In August 1991, the board went ahead with the equivalency examination for mainland-trained applicants. As noted above, none passed the EMT examination and half passed the MICT examination.

Unfair re-examination limit

The rules allow mainland-trained applicants to take the equivalency examination for EMT or MICT only three times. This appears to be arbitrary and restrictive against mainland-trained applicants.⁵

Potential problems in administering examinations

As a final note on EMTs and MICTs, we are concerned with examination conditions that could compromise the testing process. In the course of our evaluation, we attended one administration of the 60-minute equivalency examinations.

While generalizations cannot be made from one observation, we noticed several factors that could be potential problems. These may be summarized as follows:

- The designated examination room in the basement of the Kamamalu Building was small, narrow, and crowded. The aisles between the rows were not wide enough to allow a proctor to walk around the room without disturbing the examinees.
- The desks observed were small and might not accommodate physically large or left-handed examinees. (The department has said that accommodations for these examinees can be made.)
- The lighting in the room was slightly dim, especially in one area of the room against a wall.
- There were no windows that could be opened for ventilation should the air conditioner break down.

- The test supervisor did not read to examinees all instructions provided in the test supervisor's handbook.
- One examinee placed notes in a backpack in the aisle next to his desk. He was not asked to place his backpack in a storage area of the room as the test supervisor's handbook requires.

Changes urgently needed

Both mainland-trained applicants and Hawaii-trained applicants should be required to pass the equivalency examination as a test of their competency to practice as EMTs or MICTs in Hawaii. The board should develop statutory and rule changes to achieve this, to resolve the conflict between the statutes and the rules on acceptable training programs, and to eliminate the limit on the number of times the equivalency examination can be taken.

Once these changes are made, the information and instruction sheets should be revised to better explain the requirements. Both mainland- and Hawaii-trained applicants should be treated similarly with regard to providing evidence of current certification by the NREMT. Both groups should be required to have their NREMT certification verified by the NREMT.

Board Pays Insufficient Attention to Physician Assistants and Emergency Medical Personnel

We believe the current structure of the medical board makes it difficult to deal with three different occupations and it appears that insufficient attention is being paid to physician assistants and emergency medical personnel. We favor restructuring the board to regulate these two occupations.

Many difficult unresolved issues face the board. These include developing a comprehensive examination policy for physicians, clarifying the degree of supervision of physician assistants, and sorting out the troublesome situation involving mainland-trained emergency medical personnel. Resolving these issues will take time and effort.

We noticed in our review of the minutes that agenda items relating to physician assistants and emergency medical personnel were sometimes not discussed.

In our last sunset evaluation we had recommended that the board delegate its responsibility for emergency ambulance personnel to a committee.⁷ It is evident, however, that this recommendation did not result in sufficient attention being paid to regulating emergency medical personnel.

Emergency medical services committee not implemented

The statute requires the board to establish a committee of practicing emergency physicians and emergency ambulance personnel to assist the board in regulating EMTs and MICTs. The statute appears to require a permanent committee but only temporary committees have been created.

The board formed a committee to deal with specific matters relating to EMTs and MICTs in the past, and a subcommittee was formed in November 1991 to work on rule amendments to allow EMTs to initiate intravenous and defibrillation procedures under the direct supervision of MICTs. No permanent committee of practicing emergency physicians and emergency ambulance personnel existed at the time of our evaluation.

No representation for physician assistants and emergency medical personnel

Physician assistants and emergency medical personnel are not represented on the board that regulates their profession.

The board's delay in clarifying the degree of supervision of physician assistants has been attributed to the lack of representation of physician assistants on the board.

In a 1991 assessment of emergency medical services in Hawaii, the National Highway Traffic Safety Administration recommended that there be an emergency medical services physician on the board.⁸ In addition, some personnel in the prehospital, emergency medical field say that they lack communication with and input into the board and that the board does not understand their work.

Proposed addition of osteopathy regulation

In another sunset report this year, we recommend that the Board of Osteopathic Examiners be abolished and its duties be assigned to the medical board, with an osteopathic physician added as a member.⁹ Although osteopathy is a relatively small program, implementing this recommendation could further reduce the attention the medical board can give to physician assistants and emergency medical personnel.

Reconstituted board

The board currently consists of seven physicians and two lay people. We believe that the board should be reconstituted by adding a certified physician assistant and a certified MICT. These occupations badly need the attention of a board with sufficient interest in their problems.

As recommended in other sunset reports this year, an osteopathic physician should also be added if the regulation of this profession is transferred to the medical board, and a podiatrist should be added because the board regulates podiatry.¹⁰ Combined with the addition of a physician assistant and an MICT, this would bring the medical board to a total of 13 members.

Currently the board has no standing committees. Once reconstituted, the board should establish committees of its members to focus on the various occupations which it regulates.

Board Needs More Information From RICO

The board has the responsibility to discipline licensees and certificate holders who have violated disciplinary provisions. RICO investigates and prosecutes these matters for the board. In some instances, RICO works out a settlement agreement with the licensee or certificate holder which needs the approval of the board. Some board members feel they need more information from RICO to make sure their decisions are fair.

When seeking approval of settlement agreements, RICO does not provide the board with all the facts of the case. This is intended to preserve the due process rights of the respondent in the event the board does not approve the settlement. The matter then goes to a hearing, after which the board will have to rule on the hearing officer's recommended order.

Some members of the board are not comfortable with having to decide whether to approve a settlement without knowing all of the facts. Also, the board does not regularly receive information on the number, nature, or disposition of the cases where RICO investigated but took no legal action.

The board's need for more detail is understandable. But RICO's due process concerns are also reasonable.

RICO has made an effort to help the board understand the settlement agreement process and why all details cannot be provided to them. However, RICO could give the board a more complete picture, generally, of the scope of medical disciplinary complaints and problems in this state. A broader understanding of disciplinary complaints and problems would enhance the board's ability to decide on the appropriateness of settlement agreements.

RICO gives the public information on the complaint history of specific physicians and others engaged in regulated occupations, including the type of allegation (e.g., negligence), the disposition of the case, and whether the matter is pending. The board could request the same kinds of public information from RICO. The board should work with RICO on what kinds of information it would find helpful in making decisions on settlements.

Informed Consent Guidelines for Breast Cancer Need Review

The law required the board to establish standards for informed consent to mastectomy by January 1, 1984.¹¹ Our previous sunset report recommended that the director of DCCA should make funds available for the distribution of informed consent standards for the treatment of breast cancer. The board's minutes reflect that by February 1984, its breast cancer standards had been widely distributed to hospitals and physicians. The minutes for the board's April 1985 meeting show that an information sheet on breast cancer treatment alternatives had been developed by the Hawaii Medical Association and the American Cancer Society, Hawaii Division. In 1987, the board's breast cancer guidelines were incorporated into the board's rules.¹²

The majority of the board believes that the current informed consent guidelines are not necessary or useful for physicians or patients. We recommend that the guidelines be reviewed and amended periodically for accuracy and appropriateness.

Recommendations

1. The Legislature should reenact Chapter 453, Hawaii Revised Statutes, to continue the regulation of physicians, physician assistants, and emergency medical service personnel.
2. The Legislature should consider amending Chapter 453 to establish a reconstituted Board of Medical Examiners consisting of seven M.D.s, one physician assistant, one MICT, and two lay people. The new board should set up committees to focus on occupations that it regulates.
3. The board should propose amendments to the 1993 Legislature on how it intends to implement the United States Medical Licensing Examination program and what the requirements for relicensing should be after the license has been automatically terminated.
4. The board should:
 - Work with physician assistants on developing amendments to the rule on supervision of physician assistants.
 - Require the equivalency examination for all emergency medical personnel.
 - Reevaluate the passing score of the equivalency examination.
 - Provide for temporary certification for mainland-trained emergency medical applicants.

- Remove the limit on the number of times applicants may take the equivalency examination.
 - Review the statute and rules and take remedial action with regard to the certification of emergency medical personnel.
 - Work with the Regulated Industries Complaints Office on the kinds of information it should receive about medical complaints.
 - Review the guidelines on informed consent for breast cancer.
5. The Department of Commerce and Consumer Affairs should:
- Review the adequacy of its administration of examinations.

Notes

Chapter 1

1. Hawaii, Department of Commerce and Consumer Affairs, *Summary/Geographic Report* (printout), February 6, 1992, pp. 16-17.
2. *Ibid.*, p. 15.
3. *Ibid.*, p. 16.
4. Hawaii, Legislative Auditor, *Sunset Evaluation Report: Medicine and Surgery*, Report No. 84-5, Honolulu, January 1984.

Chapter 2

1. U.S., Department of Labor, *Occupational Outlook Handbook*, April 1990, pp. 144, 198; Council of State Governments, *The Book of the States 1990-91*, p. 477.
2. Act 177, SLH 1992.
3. Sections 16-85-53(c), 16-85-57, and 16-85-58, Hawaii Administrative Rules.
4. Section 453-32.5, HRS.
5. Section 16-85-61(b), Hawaii Administrative Rules.
6. Hawaii, Legislative Auditor, *Sunset Evaluation Report: Medicine and Surgery*, Report No. 84-5, Honolulu, January 1984, p. 64.
7. *Ibid.*, p. 63.
8. U.S., National Highway Traffic Safety Administration Technical Assistance Team, *State of Hawaii: An Assessment of Emergency Medical Services—April 30-May 2, 1991*, p. 17
9. Hawaii, State Auditor, *Sunset Evaluation Update: Osteopathy*, Report No. 92-24, Honolulu, December 1992, pp. 8, 12.
10. *Ibid.* and Hawaii, State Auditor, *Sunset Evaluation Update: Podiatrists*, Report No. 92-18, Honolulu, November 1992, pp. 10-11.
11. 671-3(c), HRS.
12. Section 16-85-29, Hawaii Administrative Rules.

Responses of the Affected Agencies

Comments on Agency Responses

We transmitted a draft of this report to the Board of Medical Examiners and to the Department of Commerce and Consumer Affairs on October 5, 1992. A copy of the transmittal letter to the board is included as Attachment 1. A similar letter was sent to the department. The response from the board is included as Attachment 2 and that from the department is included as Attachment 3.

The board agrees with our recommendation to reenact Chapter 453, Hawaii Revised Statutes, to continue the regulation of physicians, physician assistants, and emergency medical service personnel. It concurs with our recommendation that it propose statutory amendments to implement the United States Medical Licensing Examination (USMLE), and it is not opposed to reviewing the requirements for relicensing after a license has been automatically terminated. It concurs with our recommendations that the board work on amendment to the rule on supervision of physician assistants; provide for temporary certification for mainland-trained emergency medical personnel; remove the limit on the number of times these applicants may take the equivalency examination; and work with the Regulated Industries Complaints Office (RICO) on the kinds of information the board should receive about medical complaints. The board is willing to consider implementation of our recommendation to require the equivalency examination of all emergency medical personnel.

The board takes issue with our view that the passing score for the equivalency examination is unrealistic and restrictive. It disagrees with our recommendation to reconstitute the board and says that a better approach would be to form auxiliary advising committees including emergency medical personnel, physician assistants, and podiatrists. It does not agree that it should review the informed consent guidelines for the treatment of breast cancer, but proposes that the guidelines be repealed.

Concerning our recommendation that the department review the adequacy of its administration of examination, the department says that it will continue to seek improvements. But it disagrees that examination conditions are inadequate and says that the examination room and procedures are more than satisfactory. The department makes some suggestions for implementing our recommendation that the board receive more information from RICO.

ATTACHMENT 1

STATE OF HAWAII
OFFICE OF THE AUDITOR
465 S. King Street, Room 500
Honolulu, Hawaii 96813-2917



MARION M. HIGA
State Auditor

(808) 587-0800
FAX: (808) 587-0830

October 5, 1992

C O P Y

Dr. Erlinda M. Cachola, Chair
Board of Medical Examiners
Professional and Vocational Licensing Division
Department of Commerce and Consumer Affairs
1010 Richards Street
Honolulu, Hawaii 96813

Dear Dr. Cachola:

Enclosed for your information are 10 copies, numbered 9 to 18 of our draft report, *Sunset Evaluation Update: Medicine and Surgery*. We ask that you telephone us by Wednesday, October 7, 1992, on whether you intend to comment on our recommendations. If you wish your comments to be included in the report, please submit them no later than Wednesday, November 4, 1992.

The Director of the Department of Commerce and Consumer Affairs, Governor, and presiding officers of the two houses of the Legislature have also been provided copies of this draft report.

Since this report is not in final form and changes may be made to it, access to the report should be restricted to those assisting you in preparing your response. Public release of the report will be made solely by our office and only after the report is published in its final form.

Sincerely,

Marion M. Higa
State Auditor

Enclosures

JOHN WAIHEE
GOVERNOR



ROBERT A. ALM
DIRECTOR

NOE NOE TOM
LICENSING ADMINISTRATOR

BOARD OF MEDICAL EXAMINERS

STATE OF HAWAII
PROFESSIONAL & VOCATIONAL LICENSING DIVISION
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
P. O. BOX 3469
HONOLULU, HAWAII 96801

November 23, 1992

RECEIVED

Nov 23 1 21 PM '92
OFFICE OF THE AUDITOR
STATE OF HAWAII

Marion H. Higa, State Auditor
Office of the Auditor
State of Hawaii
465 S. King Street, Room 500
Honolulu, HI 96813-2917

Dear Mrs. Higa:

The Board of Medical Examiners ("Board") thanks you for the opportunity to provide comment on the Sunset Evaluation Update for Medicine and Surgery. We will comment on the recommendations as they appear chronologically on pages 18-19 of the report.

1. "The Legislature should reenact Chapter 453, Hawaii Revised Statutes, to continue the regulation of physicians."

The Board agrees that Chapter 453, HRS, should be reenacted to continue the regulation of physicians. The Board also agrees with the report's finding on page 5 that the State continue the regulation of physician assistants and emergency medical personnel.

2. "The Legislature should amend Chapter 453 to establish a reconstituted Board of Medical Examiners consisting of seven M.D.s, one physician assistant, one MICT, and two lay people. The new board should set up committees to focus on occupations that it regulates."

The Board is not completely convinced that this recommendation is warranted. As the report points out, "many difficult unresolved issues face the board" and that "resolving these issues will take time and effort." (emphasis added.) The Board believes this is an accurate analysis of the situation. However, instead of presenting recommendations which would help optimize use of the Board's time, effort and expertise, the report recommends expanding the Board. The Board does not see how expanding the Board will address the many difficult unresolved issues it faces in a more timely or efficient manner. In fact it is the Board's opinion this would only compound the problem.

Long term analysis of board meetings will show that in-depth discussions occur on a wide spectrum of issues over which the Board has jurisdiction. Where necessary outside input is sought. Pursuant to Chapter 92, HRS, board meetings are open to the public, and an agenda must be filed in advance of the meeting. As a long standing practice, anyone with questions or issues for the Board are invited to submit these as agenda items, and invited to attend the board meeting where these items will be discussed. The channel of communication to the Board has always been open for anyone to use, including emergency medical personnel, physician assistants, and podiatrists. Understanding and addressing problems or issues is facilitated when more direct input is provided to the Board, and where issues can be flushed out between the Board and persons attending the meeting.

We believe expanding the Board's composition will not provide any additional benefit or facilitate understanding. It is the Board's opinion that the current practice provides the Board with sufficient information, thereby enabling the Board to identify and address issues regarding emergency medical personnel, physician assistants, and podiatrists. The deficiency therefore is not due to the lack of information provided to the Board, but rather the lack of time the Board is afforded at meetings to make decisions. This is because many other agenda items vie for the Board's time.

The Board feels it should remain on the charted course recommended by the Auditor in the last sunset report, and as statutorily provided, to establish committees to assist the Board in addressing issues involving emergency medical personnel, physician assistants and podiatrists.

The Board takes exception to the statement in the report (page 15) that establishment of its committee resulted in insufficient attention being paid to regulating emergency medical personnel. Page 16 of the report clearly shows the Board's committee addressed substantive issues. How a conclusion, such as the above, can be drawn in view of direct acknowledgement the committee did deal with emergency medical personnel issues, is perplexing.

Further, to increase its understanding and knowledge of this profession, the Board has actively solicited input from (1) practitioners in the emergency medical field; (2) the Emergency Medical Services Branch, State Department of Health; (3) the Emergency Medical Services Department, Kapiolani

Community College; (4) the National Registry of Emergency Medical Technicians; (5) other state boards that certify and regulate emergency medical personnel; and (6) the United States Department of Transportation. The Board's efforts to increase its understanding of this profession have been extensive, and should be applauded.

In addition, the Board feels the report contains a very oversimplified and possibly erroneous conclusion that "delay in clarifying the degree of supervision of physician assistants has been attributed to the lack of representation of physician assistants on the board." Attributing timely resolution to the presence of a single physician assistant (as recommended for the reconstituted board) may evidence a lack of understanding of how complex issues are, and the deliberative process boards should, and need to go through in deciding issues involving consumer health, safety and welfare. In this regard, neither a fast resolution or a single person perspective (i.e. physician assistant board member) is a workable solution for regulatory boards.

Again, not being convinced that a reconstituted board is in order (moreso with what has been described above) the Board would disagree with this recommendation. Instead, the Board sees a better approach would be to form auxiliary advising committees, the composition of which would include emergency medical personnel, physician assistants and podiatrists. The committees would be formed and activated to receive input and flush out issues relative to each area. The committees would present recommendations to the Board for their consideration and action. The Board sees more merit to this approach as it has come to realize that there is only so much time it has to deliberate on issues. Utilizing committees may result in resolving issues in a timely manner with less effort, (which the report states is a problem for the Board) and we are prepared to move more actively in this direction.

3. "The Board should propose amendments to the 1993 Legislature on how it intends to implement the United States Medical Licensing Examination (USMLE) program and what the requirements for relicensing should be after a license has been automatically terminated."

As noted in the report, the Board went on record to accept the USMLE and will initiate the necessary changes to its' law.

With regard to the recommendation that requirements be established for relicensing, the Board is not opposed to reviewing this matter for future legislative consideration. To act on such a proposal now would seem premature and inappropriate, especially in view that very few situations have occurred surrounding this issue. Further, when these issues have arisen the Board has been able to work with the current law and rules to reach a decision.

While the report is very critical of the Board's decisions in this area, the Board feels confident its actions were not inconsistent. In each instance, the Board's advising deputy attorney general worked closely with the Board in its decision making. The decisions made were considered legally defensible, and fairly applied within the perimeters of the law and rules.

4. a. "The board should work with physician assistants on developing amendments to the rule on supervision of physician assistants."

The Board concurs with this recommendation, and in fact is presently engaged in meetings with the Hawaii Academy of Physician Assistants (HAPA), and has already exchanged proposals and recommendations for future rule amendments concerning the interaction of the two practices.

- b. "The board should require the equivalency examination for all emergency medical personnel."

The Board has itself deliberated on this matter long before the Auditor commenced its review. However, there were then, as there is now, pros and cons with requiring the equivalency examination for all emergency medical personnel. The Board is willing to discuss this matter again and attempt to reach a decision.

While the above will be deliberated in the future, the numerous criticisms directed at the equivalency program through the report is a matter the Board wishes to address now, as follows:

- (1) "Equivalency examination not authorized by statute"/
"The rules are probably invalid and unenforceable."
(page 11)

The report directs the above comments at sections 16-85-53(c), 16-85-57, and 16-85-58, Hawaii Administrative Rules ("HAR").

Chapter 91, HRS, prescribes procedures for the adoption, amendment, or repeal of administrative rules. Because Chapter 91, HRS, imposes stringent procedural requirements, the threshold issue for the Board and its advising deputy attorney general to address is whether sufficient statutory authority exists to justify administrative rulemaking. (Emphasis added.) In this instance, the answer was in the affirmative. Thus, the advising deputy attorney sanctioned the administrative rules in question, and has never questioned the validity or enforceability of these rules. Therefore, it is the Board's position that the administrative rules are legal, valid and enforceable.

- (2) "The Board has not reviewed mainland programs to determine how they compare with Hawaii programs, or whether Hawaii's programs are in fact superior." (page 11)

This statement is simply erroneous. The Board has reviewed several mainland programs, and talked with officials to determine how mainland programs compare with Hawaii programs, and made the following findings:

- a. Section 453-32, HRS, requires that applicants for EMT/MICT certification complete a course of training in emergency medical services based on the national curriculum of the United States Department of Transportation ("DOT"). In its research, the Board found that most states, including Hawaii, exceed the DOT curriculum minimum.
- b. Although most states exceed the DOT curriculum minimum, the number of required curriculum hours does vary from state to state.
- c. The professional consultant who developed the equivalency exam reviewed, among other factors, the NREMT examination, and the curriculum of Kapiolani Community College ("KCC"). The consultant found that the NREMT examination did not encompass all the subject

matter covered by the KCC curriculum. This lead to a presumption that the KCC curriculum was more comprehensive than other states' curriculum.

- (3) "Additional fees for mainland-trained applicants."
(page 12)

While the report accurately describes the differing fees between applicants, it fails to provide an explanation of the reason why this is the case. The Auditor should be aware sections 26-9(1) and 436B-15, HRS, expressly authorizes the department to assess fees, including examination fees, provided the fees bear a reasonable relationship between the revenue derived and the cost or value of services rendered. All fee assessments must be done pursuant to Chapter 91, HRS.

In this instance, the examination fees for applicants are necessary to recover costs incurred by the State to develop and administer the equivalency examinations. These fees were adopted after applicable provisions of Chapter 91, HRS were followed. Records could have easily been provided by the department to show this is the basis for the differing fees.

- (4) "Restrictive passing score."

The report criticizes the equivalency examination passing score as being unrealistic and restrictive, and proposes that "the score be set at a level at which they (examinees) can pass the examinations." This proposal simply does not conform to standard test and measurement rationale.

In general, for licensure and certification examinations, it is more appropriate to set passing scores based on criterion-referenced scoring rather than norm-referenced scoring. Norm-referenced scores utilizes a method designed to pass a designated number of percentage of examinees. Criterion-referenced scoring, on the other hand, is based on a fixed criteria regarding minimal

competency, and the passing score does not fluctuate depending on the caliber of the examinees. (Emphasis added.) Thus, especially with a minimal amount of test-takers as in this case, a low passing rate is not unusual.

For the equivalency examination in question, the Angoff method of setting a criterion-referenced passing score was utilized. Professionals in the field of emergency medical services were asked to rate the individual items developed for the examinations in terms of difficulty. The results were analyzed by the professional testing company that was contracted to develop the examination. Based on test and measurement standards, and more specifically factors impacting on criterion-referenced scoring, the testing company recommended to the Board that a cut score of 75 percent be used. The Board reviewed the data collected and the bases for the testing company's recommendation, and agreed that a cut score of 75 percent be used as the passing score.

The Auditor has also made recommendations at the end of the report concerning the equivalency examinations, and the Board responds as follows:

"Provide for temporary certification for mainland-trained emergency medical applicants."

The Board agrees that there could be a mechanism established for temporary certification for all emergency medical applicants. The temporary requirements should include providing proof that the applicants' training satisfies the number of hours set forth in the board's administrative rules, and the applicant applies to take the next scheduled NREMT examination.

"Remove the limit on the number of times applicants may take the equivalency examination."

The Board and the department similarly have questioned the re-examination limit specified in section 16-85-61(b), HAR. We were advised by our deputy attorney general that the Board's concern was valid and that the rule should be repealed. The Board therefore agrees with this recommendation.

Marion H. Higa, State Auditor
November 23, 1992
Page 8

Additional recommendations at the end of the report made by the Auditor on other subject matters include:

"The board should work with the Regulated Industries Complaints Office on the kinds of information it should receive about medical complaints."

The Board agrees with the recommendation to work with RICO on the kinds of information it should receive about medical complaints.

"The board should review the guidelines on informed consent for breast cancer."

The Board disagreed with this recommendation and opted to propose that the Board of Medical Examiners Policy No. 1, Guidelines For Methods of Treatment For Breast Cancer be repealed.

Again, thank you for the opportunity to provide comment.

Very truly yours,


Erlinda M. Cachola, M.D.
Chairperson
Board of Medical Examiners

JOHN WAIHEE
GOVERNOR



STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
1010 RICHARDS STREET
P. O. BOX 541
HONOLULU, HAWAII 96809

ROBERT A. ALM
DIRECTOR

SUSAN DOYLE
DEPUTY DIRECTOR

November 23, 1992

RECEIVED
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OFFICE OF THE AUDITOR
STATE OF HAWAII

Ms. Marion M. Higa, State Auditor
Office of the Legislative Auditor
State of Hawaii
465 South King Street, Room 500
Honolulu, HI 96813-2917

Dear Ms. Higa:

Thank you for providing the Department of Commerce and Consumer Affairs ("department") the opportunity to comment on the Sunset Evaluation Update on Medicine and Surgery.

At the end of the report it is recommended that the department "should review the adequacy of its administration of examinations." To the extent that the administration of examinations is a departmental priority, we will continue to invest our efforts in this area to always improve administration of our examinations.

The above recommendation, while no different from our own philosophy, results from opinions that certain examination conditions related to the administration of the EMT/MICT examinations could be potential problems. We disagree with the report's characterization of examination conditions, and will respond in the order that these appear on pages 14-15 of the report.

1. "The designated examination room in the basement of the Kamamalu Building was small, narrow, and crowded. The aisles between the rows were not wide enough to allow a proctor to walk around the room without disturbing the examinees."

The designated examination room is one of the largest in the building. Generally, approximately 25 examination seats are situated in this room. These seats are portable and are easily moved, rearranged, or folded and put aside. This room is used to administer examinations to 25 or less examinees.

Whatever the opinions about the examination area, the room conforms with standard test taking criteria to provide adequate space for examinees. As the maximum seating capacity of 25 is set up, examinees cannot communicate with, or observe the responses of other examinees. While it would be nice to have a larger room, the threshold for the seating capacity would be increased to make maximum use of space within the boundaries of standard test taking criteria.

An opinion is also expressed that the width of the aisles between rows were not wide enough "to allow a proctor to walk around the room without disturbing the examinees." With the configuration of the examination room, it is not necessary for the proctor to walk around the room to observe examinees. The room is intentionally arranged so that the proctor is able to see the entire room and all examinees. With a panoramic view of examinees, the proctors do not need to walk the aisles. We would not want to create wider aisles for proctors to now walk through as it would distract examinees.

In summary, we do not agree with the opinions surrounding our examination room, and assert that it conforms with standard test taking criteria.

2. "The desks observed were small and might not accommodate physically large or left-handed examinees. (The department has said that accommodations for these examinees can be made.)"

The desks are of sufficient size to accommodate the examination and answer sheet. Meeting this criteria we question why the desks would need to be larger. Further, the concern the desks might (emphasis added) not accommodate certain types of examinees is simply remedied by our ability to address this matter without any problem. And there are in fact desks for the left-handed.

3. "The lighting in the room was slightly dim, especially in one area of the room against a wall."

The lighting in the designated examination room is sufficient, and meets test and measurement standards. The department notes that it has not received any complaints from examinees regarding lighting. We add too that the examination room has been repainted a brighter white which adds to its appearance.

4. "There were no windows that could be opened for ventilation should the air conditioner break down."

Should this concern become a reality, ventilation will be achieved with fans that are readily available to remedy the situation. A possible breakdown of A/C capabilities is planned and prepared for.

5. "The test supervisor did not read to examinees all instructions provided in the test supervisor's handbook. One examinee placed notes in a backpack in the aisle next to his desk. He was not asked to place his backpack in a storage area of the room as the test supervisor's handbook requires."

To our knowledge, the test supervisor did read all applicable instructions to examinees. Also, to our knowledge, the test supervisor did ensure that examinees did not have access to notes that would compromise the integrity of the exam taking process.

To elaborate, the test manual of the department (test supervisor's manual) is a compilation of examination procedures and instructions that have been extracted from various national examinations. This manual has not been finalized. It is the department's intent that this manual serve as an administrative guideline, and be all-encompassing. This manual is not intended to be read in its entirety to examinees at each examination; rather only those portions that are applicable to a given examination are read to examinees.

The manual suggests, but does not require, that examinees place their belongings in a separate area of the room while taking the examination. This procedure has been revised to allow examinees to keep their belongings next to their seat, on the floor. This reduces the possibility of theft or mix-up.

In conclusion, the department is satisfied that examination room and procedures are more than satisfactory to avoid potential problems.

On another matter, the report states that the Board needs more information from RICO, and the report recommends that the Board work with RICO on the kinds of information it should receive about medical complaints.

Ms. Marion M. Higa
November 23, 1992
Page 4

The Board and RICO do work together in partnership in that RICO provides the Board information concerning complaint history as requested on applicants for licensure and relicensure. In addition, RICO has appeared before and spoken to the Board about the settlement procedure and factors considered when entering into settlement negotiations. To the extent, however, that the Board wishes to know specific facts not covered by the settlement agreement due to the nature of the proceeding, RICO is not able to disclose such information.

In order to assist the Board, RICO is prepared to furnish the Board's executive secretary with a copy of the complaint history file for each medical case at the time of final disposition. Alternatively, RICO can provide the Board with quarterly reports on medical cases which would include case number, respondent's name, allegations and disposition. Such information by necessity, will be limited so as not to taint the Board should the cases be brought before it.

Again, thank you for the opportunity to provide comment.

Very truly yours,



ROBERT A. ALM
Director

A BILL FOR AN ACT

RELATING TO MEDICINE AND SURGERY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 26H-4, Hawaii Revised Statutes, is
2 amended by amending subsection (c) to read as follows:

3 "(c) The following chapters and sections are hereby
4 repealed effective December 31, 1993:

5 (1) Chapter 452 (Board of Massage)

6 [(2) Chapter 453 (Board of Medical Examiners)

7 (3)] (2) Chapter 460 (Board of Osteopathic Examiners)

8 [(4)] (3) Chapter 461J (Board of Physical Therapy)

9 [(5)] (4) Chapter 463E (Podiatry)

10 [(6)] (5) Chapter 514E (Time Sharing Plans)

11 [(7)] (6) Sections 804-61 and 804-62"

12 SECTION 2. Section 26H-4, Hawaii Revised Statutes, is
13 amended by amending subsection (i) to read as follows:

14 "(i) The following chapters are hereby repealed effective
15 December 31, 1999:

16 (1) Chapter 436E (Board of Acupuncture)

17 (2) Chapter 442 (Board of Chiropractic Examiners)

18 (3) Chapter 444 (Contractors License Board)

19 (4) Chapter 448E (Board of Electricians and Plumbers)

1 (5) Chapter 453 (Board of Medical Examiners)

2 (6) Chapter 464 (Professional Engineers, Architects,
3 Surveyors and Landscape Architects)

4 [(6)] (7) Chapter 465 (Board of Psychology)

5 [(7)] (8) Chapter 468E (Speech Pathology and Audiology)"

6 SECTION 3. Section 453-5, Hawaii Revised Statutes, is
7 amended by amending subsection (a) to read as follows:

8 "(a) [For the purpose of carrying out this chapter the] The
9 governor shall appoint a board of medical examiners[, whose duty
10 it shall be] to examine all applicants for license to practice
11 medicine or surgery. As used in this chapter, "board" means the
12 board of medical examiners.

13 The board shall consist of [nine] eleven persons, seven of
14 whom shall be physicians or surgeons licensed under the laws of
15 the State, one of whom shall be a physician assistant certified
16 under the laws of the State, one of whom shall be a mobile
17 intensive care technician certified under the laws of the State,
18 and two of whom shall be lay members appointed from the public at
19 large. [Of the seven] Four physician or surgeon members[, four]
20 shall be appointed from the city and county of Honolulu [and one
21 each from each of the other counties.], while one physician or
22 surgeon member shall be appointed from the counties of Kauai,

1 Maui, and Hawaii, each. Medical societies in [the various
2 counties] each county may conduct elections periodically, but no
3 less frequently than every two years, to determine nominees for
4 the board to be submitted to the governor. In making
5 appointments, the governor may consider recommendations submitted
6 by the medical societies and the public at large. Each member
7 shall serve until a successor is appointed and qualified."

8 SECTION 4. Statutory material to be repealed is bracketed.
9 New statutory material is underscored.

10 SECTION 5. This Act shall take effect upon its approval.

11

12

INTRODUCED BY: _____